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in the

Supreme Court

of the

United States

CASE NO. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

REPLY TO THE BRIEF OF THE RESPONDENT AEROJET-GENERAL CORPORATION WITH APPENDIX

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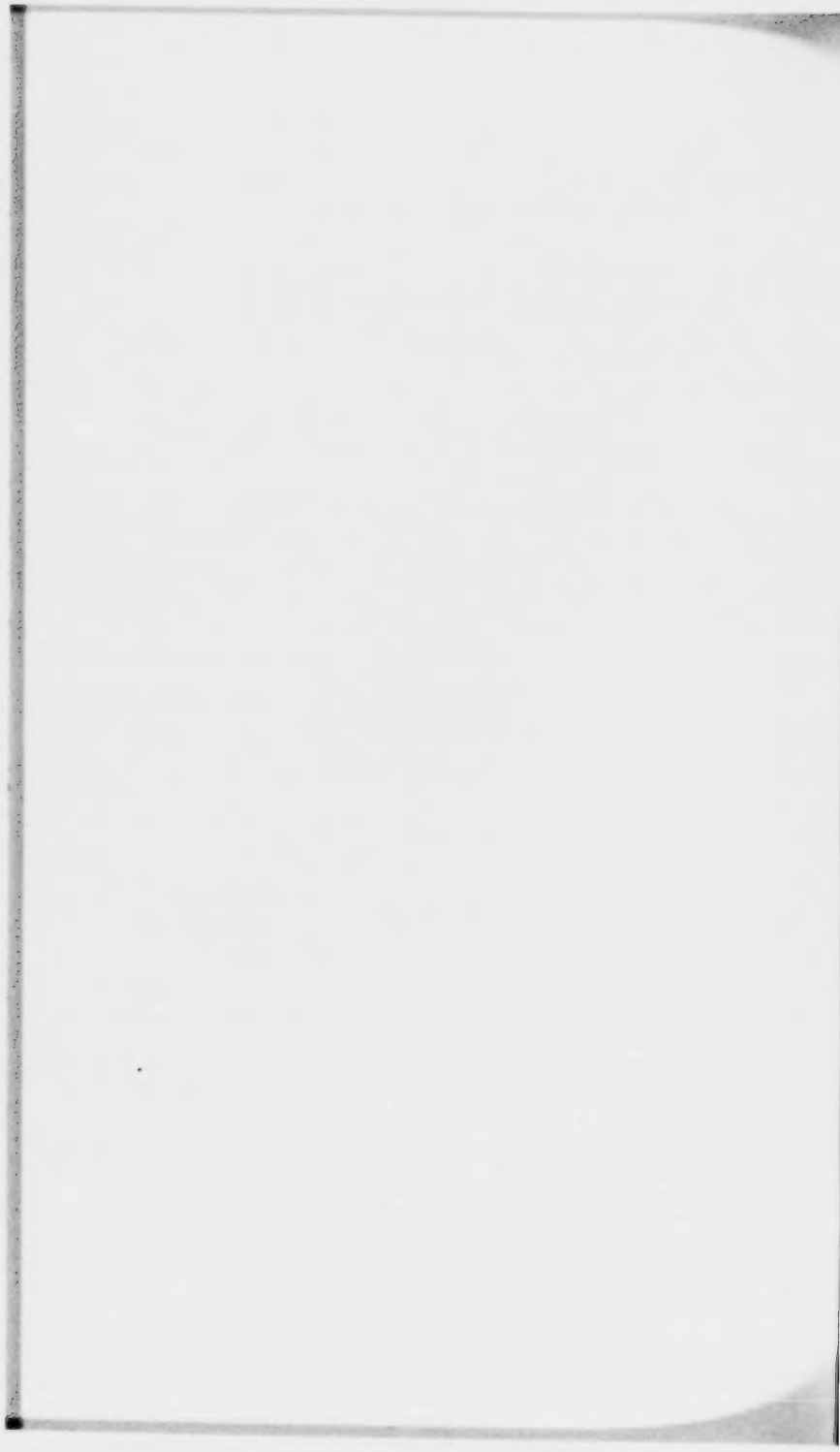

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Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

REPLY TO THE BRIEF OF THE RESPONDENT AEROJET-GENERAL CORPORATION

REPLY TO THE RESPONDENTS' CONTENTION THAT THE TRUSTEES HAVE POWER TO GRANT OPTION

Unless otherwise stated, emphasis has been supplied by the Petitioners to material quoted.

In the decision of the *New Haven Inclusion Cases*, 399 U.S. 382, 90 S.Ct. 2054 at page 2104, the Supreme Court

of the United States indicates that the failure to respond to a reply brief may be taken as an abandonment of a petitioner's contention, impels the petitioners to respond to the brief of Aerojet.

The Respondent, in its brief, urges (at pages 4, 5, and 13) that the administrative construction of the Petitioners' powers is entitled to "great persuasive force." In this the Petitioners concur and point with confidence to the fact that never in the existence of the Trustees of the Internal Improvement Trust Fund has there ever been an option to purchase public land granted by the Trustees except in the case sub judice. Such administrative construction proves the contention that the option was granted without statutory authority.

In this regard the Court of Appeals failed to recognize the force of the opinion of the Supreme Court of Florida in the case of *Watson v. Holland*, 20 So.2d 388 (Fla. 1945). In that case the Supreme Court of Florida said:

> "Section 270.07, F.S. 1941, F.S.A., originated from Section 1 of Chapter 5943 of the Laws of 1909, being 'An Act to Provide for the Sale of Lands That Are Now or May Hereafter Be, Vested in the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of the State of Florida.' Such Chapter not only contemplated the advertisement of lands to be so sold, conveyed or disposed of, but also that such lands should be sold to the highest bidder upon sealed bids not to be opened until the day of sale provided in the advertisement, at

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which time such bids should be opened in the presence of the Trustees of the Internal Improvement Fund if they were making the sale, or in the presence of the State Board of Education if it were making the sale. The Legislature was then dealing with the general subject of disposing of the fee simple title to its lands just as it was when in Chapter 6159, Act of 1911 (see Section 270.11, F.S. 1941, F.S.A.) it was dealing with the subject of reserving for the benefit of the people of this state 'an undivided one-half interest in, and title in and to, an undivided one-half interest in all the petroleum that is or may be in, on, or under said above described land * * *', referring to the contracts for sale and deeds for the sale of lands that might thereafter be executed by the Trustees of the Internal Improvement Fund of the State of Florida and the State Board of Education of the State of Florida.

* * *

"A mere consideration of the history, purpose and intent of the Legislature demonstrates that the leasing of lands and water bottoms for the highly specialized purpose of producing oil, gas and other minerals as contemplated by Section 270.28, F.S. 1941, F.S.A., is a thing separate, distinct and apart from the sale, conveyance and disposition of the fee simple title to lands contemplated in Section 270.07, F.S. 1941, F.S.A."

In light of this decision, it is clear that the Trustees are authorized only to sell the fee simple title to public lands under Section 270.07, F.S., and not a lease or an option to purchase.

An examination of all of the sections of Chapter 270, F.S. reveals that the legislature did not intend to expand in any way the trustees' power of sale of public land. Thus the notice required by Section 270.07, F.S., shall state "for the full term of thirty days prior to *such sale*." Moreover, Section 270.08, F.S., in dealing with the type of transaction referred to in Section 270.07, F.S., requires that the Trustees decide or "regard it expedient to *sell* any of the lands"; that there be a notice of "*such sale*"; that such notice be published "in the county or counties where such land to be *sold* are situated"; that the notice shall "state the *terms of sale*"; and that bids will be received from the date of notice "*until the day of sale*". If the Trustees "are making the *sale*", or if the State Board of Education is "to make *such sale*", proof of publication of such notice shall be filed "immediately after the expiration of the time of *said sale*."

Section 270.09, F.S., permits any person the privilege of filing an offer with the board "making *the sale*". No bids shall be opened "until the day of *sale* provided in said notice." After the opening of the bids the Trustees or the Board "shall *sell* to the highest bidder, upon satisfactory terms, for cash or otherwise" and the Trustees shall "make, execute and deliver *a deed* or *deeds* to the *purchaser* or *purchasers* of such lands, in the manner now provided by law and in accordance with the terms agreed upon." A record of "all *such sales* shall be kept by the said trustees."

Not less than eleven times Section 270.07, 270.08 and 270.09, F.S., refer to the transaction therein contemplated as *a sale*.

The case of *Watson v. Holland*, *supra*, and the language of the Competitive Bidding Statute denies the power of the Trustees to "sell and convey" an option to purchase.

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The District Court of Appeal of Florida, Second District, in the case of *Warren v. City of Leesburg*, 203 So.2d 522, 526, stated:

> "Also, the weight of authority holds that a mere option to purchase land (or repurchase land) does not vest the holder of such option with any interest, legal or equitable, in the land itself. . . ."

The Respondent contends that the Competitive Bidding Statute dealing with the sale of public land and the Competitive Bidding Statute dealing with the expenditure of public funds have two different sets of rules. That unfair bid specifications when the state is spending public funds renders the contract void but that unfair bid specifications when the state is selling public land would not render the contract void.

The purpose, of course, of both bid statutes is to prevent favoritism and the same rules obviously apply. The Court of Appeals stated in this regard: (A. 60)

> "We regard it as significant that, despite appellants' intimation that the claimed ambiguity of the notice for bids was designed to assure the plaintiff that it would get the property, they fail to allege any fraud, *favoritism*, collusion or corruption between Aerojet and the defendants' predecessors in office."

This statement of the Court of Appeals rebuts itself. If the specification for bids was "designed to assure the plaintiff it would get the property," then that is the rankest form of favoritism.

The Respondents urge (Respondent Brief p. 30) that the Petitioners have the implied statutory power to grant an option to purchase public lands because they are authorized "to make such arrangements for the drainage of swamp and overflowed lands as in their judgment may be most advantageous. . . . §253.18, F.S." An examination of the option to purchase discloses that it has not the slightest relationship to an arrangement "for the drainage of swamp and overflowed lands."

REPLY TO THE RESPONDENTS' CONTENTION THAT THE PETITIONERS ARE EQUITABLY ESTOPPED

The Respondent urges that legal and equitable estoppel is applicable to the Petitioners (Respondent Brief p. 31), which precludes the disavowal of this unauthorized option to purchase. This argument is answered by the Supreme Court of Florida in the case of *Edwards v. Town of Lantana*, 77 So.2d 245, 246 (Fla., 1955), in which the Court held:

> "We have not ignored appellants' argument that the construction of the roadway, installation of water mains and erection of the ornaments were, in the vernacular, a 'package deal' and that the municipality should not be allowed to receive the benefits from the construction of the streets and installation of mains and repudiate the part of the contract providing for the ornaments. In this attempt, so they insist, the doctrine of estoppel should be invoked.
>
> "Although the argument appeals to us from a moral standpoint, we have the conviction that we would veer widely from the course defined by the

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authorities if we held that rugged justice demanded in this particular case that the appellee should be held to all its bargain. To reach the point, we would be compelled to rule that the appellee was estopped to deny the validity of the contract, and the weight of authority forbids the position. Donovan v. Kansas City, 241 Mo. 430, 175 S.W.2d 874; Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557. In the case of Texas Co. v. Town of Miami Springs, Fla., 44 So.2d 808, we invoked the doctrine of estoppel against a municipal corporation but the fundamental fact there was not the same as the fundamental fact here. *In the cited case the municipality had the power to act as it did, but acted in such fashion as to create an estoppel; here the town acted beyond its prescribed power.*"

In the case of *Hoskins v. City of Orlando*, 51 F.2d 901 (5th Cir. 1931), the United States Court of Appeals, at page 906 stated:

"Nor can estoppel be invoked against a municipality to validate that which is unlawful or wholly ultra vires."

In the case of *Purdy v. Covert*, 151 So.2d 891, 893 (Fla.App.2d, 1963), the Court said:

"The 'stipulations' and 'waivers' are unimportant to a consideration of the question in this case. Public Officers were involved and the moneys were public funds. Public funds may not be prejudiced or impaired by waivers or agreements

> which ignore regulations adopted for the protection of the fund. Otherwise, a 'give-a-way' of public funds might result."

In the case of *State ex rel. Nuveen v. Greer*, 88 Fla. 249, 102 So. 739, 744, the Supreme Court of Florida said:

> "The doctrine of estoppel is part of common law that is in force in this state, and it should be appropriately applied when the facts in a litigated case justify it. But the principal of estoppel does not operate to confer authority, though it may under some circumstances be invoked to preclude a denial that authority conferred was duly exercised. See 19 R. C. L., p. 1000."

Under the statute and under the oath of office taken by the Trustees, they are both legally and morally obligated to decline to perform a contract that is unauthorized by statute. Their failure to do this would constitute a breach of their statutory trust. Said trustees have a clear duty to deal fairly and in good faith with the beneficiaries of their trust and to refuse to recognize all illegal and unauthorized contracts, especially in view of the fact that Aerojet knew, at the time it applied for this ten-year option, or should have known at that time, the extent of the authority of the Trustees.

> "Although a private agent, acting in violation of specific instructions, yet within the scope of his general authority, may bind his principal, the rule as to the effect of a like act of a public agent is otherwise, for the reason that it is better that an individual should occasionally suffer from the

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mistakes of public officers or agents, than to adopt a rule which, through improper combinations, or collusion, might be turned to the detriment and injury of the public. . . ."

"Individuals as well as courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act." . . . (Citations omitted.)

William H. Whiteside, et al. v. United States, 93 U.S. 247, 258, 23 L.Ed. 882.

A person dealing with public boards and bodies must at his peril determine that the officers executing contract, note, lease or option had competent legal authority to bind the public body or board for which they undertook to act. *First National Bank of Key West v. Board of Public Instruction of Dade County*, (Fla. 1933) 145 So. 203. In that case the Supreme Court of Florida said:

"The judgment of the court below, entered upon sustaining defendant's demurrer to plaintiff's declaration in a suit brought to enforce promissory notes executed by the board of public instruction of Dade county, in consideration of the purchase price of lands for a school site, should be affirmed on the authority of Babcock v. Board of Public Instruction for Dade County (Fla.), 140 So. 644 decided at the last term, unless the fact that plaintiff, being a bona fide third person holder of the notes for value, has a greater right to enforce same than did the original payee.

"[1] The rule on this subject is that the protection that commercial usage throws around commercial paper cannot be used to establish the authority by which it was originally issued.

"[2] A purchaser of commercial paper executed by the board of public instruction of a county must at his peril see that the officers executing same had competent legal authority to bind the public corporate board for which they undertook to act. See Pierce v. United States, 7 Wall. 666, 19 L.Ed. 169."

The Respondent relits upon the case of *Meredith v. City of Winter Haven*, 320 U.S. 228, 64 S.Ct. 7 (1943). In that case the Supreme Court of the United States indicated that it would seek State Court determination of State questions which "appraise or shape the domestic policy of the state governing its administrative agencies."

In the case sub judice the question to be decided is the power and authority of an administrative agency of the State of Florida and the manner in which the agency must conduct itself in the sale and disposition of public lands.

The Respondent cites the case of *Watson v. Caldwell*, 35 So.2d 125 (Fla., 1948) to establish that the Petitioners had implied statutory powers. The Court there was dealing with the power of the School Board to exchange land in order to permit the Trustees of the Internal Improvement Trust Fund to comply with the legislative act designed to aid in the establishment of the Everglades National Park. It has nothing whatever to do with the granting of an option to purchase public lands. In fact the Court said:

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"Section 270.07 et seq. controls the sale of public lands in the open market and have on application to an exchange by the state or its agencies unless so stated by the terms of the act. 49 C.J. Section 653. This was not a 'sale' but an exchange in kind to effectuate a definite legislative purpose which we shall now discuss more fully."

The instruments executed by the Trustees granting grazing leases and leases of all kinds were specifically authorized by the provisions of Section 253.45 F.S.[1]

[1]Section 253.45, F.S.

253.45 Sale or lease of phosphate, clay, minerals, etc., in or under state lands.—

(1) The board of trustees of the internal improvement trust fund may sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on, or under, any land the title to which is vested in the state, the department of general services, the department of natural resources, the game and fresh water fish commission, the state board of education, or any other state board, department, or agency; provided that the board of trustees may not grant such a sale or lease on the land of any other state board, department or agency without first obtaining approval therefrom. No sale or lease provided for in this section shall be allowed on hard-surfaced beaches that are used for bathing or driving and areas contiguous thereto out to a mean low water depth of three feet and landward to the nearest paved public road. Any sale or lease provided for in this section shall be conducted by competitive bidding as provided for in §§253.52, 253.53 and 253.54. The proceeds of such sales or leases are to be credited to the board of trustees, board, department or agency which has title or control of the land involved.

(2) The board of trustees of the internal improvement trust fund or any other state agency authorized to grant leases under this section shall specify in each such lease, in clear and precise terms, the particular minerals for which the lessee is permitted to drill or mine and the manner in which the same may be extracted.

REPLY TO THE RESPONDENTS' CONTENTION THAT CERTIORARI NOT GRANTED UNLESS THE COURT OF APPEALS FLAGRANTLY ABUSED ITS DISCRETION OR ACTUALLY DISOBEYED THE LAW

Respondent states it chose the "Federal forum" because "Petitioners are politically elected officials, as are the Judges of Florida's State Courts. The law of Florida clearly defines the rights of parties who litigate with Petitioners, and *Respondent felt obliged to bring this action in federal court to insure that the law of Florida would be dispassionately applied to this case.*" (Respondent's Brief, page 15.) Respondent further states it chose "a forum which will apply law and not politics to the case at hand." (Respondents Brief p. 33)

The Respondent contends that the certiorari in this case should not be granted unless there was "flagrant abuses of discretion or actual disobedience of law." (Respondents' Brief p. 17) Actually the failure of the Court of Appeals to apply the rules of law established by the Supreme Court of Florida in competitive bidding cases violates the provisions of Section 1652, USCA, Title 28, which provides as follows:

> "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States in cases where they apply."

In the case of *Tipton v. Socony Mobil Oil Company, Inc.*, No. 200, 84 S.Ct. 1, the Supreme Court of the United

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States granted certiorari because of the erroneous admission of evidence which was held to be harmless error by the United States Court of Appeals, Fifth Circuit. In that case the Supreme Court of the United States said:

> "The Court of Appeals for the Fifth Circuit unanimously held it error to have admitted the evidence of other compensation benefits, but with one Judge dissenting, found the error harmless. We grant the petition for a writ of certiorari and vacate the judgment."

We respectfully suggest that the Court of Appeals completely departed from the accepted practice, the tradition and rule enunciated by it and by every other United States Court of Appeals that in a diversity of citizenship case where there is no state decision on the precise point, the appellate court will apply the general law on the subject matter.

The United States Court of Appeals, Fifth Circuit, in the case of *Jackson v. Sam Finley, Inc.*, 366 F.2d 148 (1966), held:

> "Where the highest court of the state has not authoritatively spoken, the federal court may assume that state law will accord with generally accepted principles of substantive law."

In the case of *Marchessault v. National Grange Mutual Liability Company*, 229 F.2d 698, the United States Court of Appeals, Second Circuit, stated:

> "As there is no local decision, we may assume that Vermont law accords with the general principles of the law of Contracts as applied in the cases above cited."

In the case of *Adam Hat Stores, Inc. v. Lefco, et al.*, 134 F.2d 101, the United States Court of Appeals, Third Circuit, said that where there is no decision of the Courts of Pennsylvania in a diversity case:

> "In that situation, the only course open to a federal court is to look to the general law as being the most persuasive datum available for ascertaining the pertinent local law."

In the case of *Aaron v. Florida Gas Transmission Company*, 412 F.2d 802 the United States Court of Appeals, Fifth Circuit, stated:

> "There is no area of the law more appropriate for the application of the Erie doctrine than land contracts and title law."

Again in the case of *Makariw v. Rinard*, 336 F.2d 333 (1964), the United States Court of Appeals, Third Circuit, held that where the precise issue in the case was one of the first impression in Pennsylvania:

> "We are required to consider such approach to the problem as may be indicated by the Pennsylvania cases in the general field and to resort to general applicable principles to reach a conclusion consistent with Pennsylvania law."

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In the case of *Robert Porter & Sons, Inc. v. National Distillers Products Company*, 324 F.2d 202 (1963), the United States Court of Appeals, Tenth Circuit, held:

> "In matters concerning the law of a particular state where there are no state decisions in point, the determination by the trial judge will be accepted *if it is within the general authorities on the point.*"

Again the United States Court of Appeals, Tenth Circuit, in the case of *Fisher v. Firemen's Fund Indemnity Company*, 244 F.2d 194, said:

> "And since the state courts of Kansas have had no occasion to pass on the particular question presented we must rely on the general law of that state and authority we consider persuasive."

In *Fair et al. v. United States*, 234 F.2d 288, the United States Court of Appeals, Fifth Circuit, stated:

> "Failing to find determinant precedent in Texas law, it will be the duty of the trial Court to look to the general law fixing liability of private institutions for injuries to those towards whom they have a responsibility."

Looking now to a determination of whether the Court of Appeals, in the case sub judice, followed this well established rule in dealing with the authority of the Petitioners to grant the option to purchase, the Court of Appeals said: (A: 56)

> "Defendants in this connection cite no Florida decisions but refer us to rulings in courts in Texas, Georgia and Mississippi."

These three authorities are states located within the Fifth Circuit. Without the citation of a single ruling of law or the citation of a single authority to support its position, the Court of Appeals said: (A. 57)

> "Defendants' argument on this point is not persuasive. As officials of the State of Florida, the Defendants, are, of course, limited to activities that are within the statutory authority but we believe that the predecessors of the Defendants did not in 1961 exceed their warrants by executing the lease which serves as the basis for this law suit."

The question was whether or not the officials had the authority to give a valid option to purchase, where the statute granted them only the authority as Trustees "to sell or transfer" state lands. If the Court of Appeals had followed the rule which binds them to look to the general law, under the circumstances of this case they would have found that in England, the case of *Clay v. Rufford*, 5 De Gex & S. 768, denied the power of a trustee who may sell or transfer the authority to grant an option.

In the State of Delaware, in the case of *Equitable Trust Co. v. Delaware Trust Co., et al.*, 54 A.2d 733, it is held:

> "The grant of an option to purchase is neither a sale nor an agreement to sell property. . . . Ordinarily, the grant of that right is not essential to

the exercise of a power of sale, and a fiduciary, with a mere general power, *therefore, cannot grant a future option to buy the property.*"

In the case of *Trogden, et al v. Williams, et al.*, 56 S.E. 865, the Supreme Court of North Carolina held:

"The next question presented is: 'If the power of sale is conferred by the will, does this power include the power to execute an option for 90 days?' We concur with his honor that it does not."

In the case of *Hickok v. Still*, 31 A 1100, the Supreme Court of Pennsylvania stated:

"He did not sell the property, but entered into an agreement with the plaintiff which gave her the privilege of buying at any time within 3½ years. By this agreement she was entirely free; she was not bound to purchase. But he — and, in the event of his death, his successor in the trust — was bound to sell to no one else during the period fixed. The vice of the agreement is this: that it bound the trust estate, no matter what the detriment to it might be, without giving it any corresponding advantage. This was not a use of the power, but a surrender of it for the time."

In the case of *Loud v. St. Louis Union Trust Co.*, 281 S.W. 744, the Supreme Court of Missouri stated:

"In 28 Halsbury's Laws of England, p. 150, it is said:

> 'A trustee having a power or trust for sale cannot give to a lessee or other person an option of purchase for a definite sum at a future date, since, if the property increases in value in the meantime, the trust estate will lose the increment, while if it deteriorates, the option will not be exercised.'"

See also the case of *Adler v. Adler*, 118 S.E. 2d 456 (Georgia); *Potter Company v. C. C. Slaughter Cattle Co.*, 254 S.W. 775 (Texas Appeals); *American Oil Co. v. Marion County*, 192 So. 296, 299 (Mississippi); and *Bogart on Trusts* and a restatement of the law of trusts.

REPLY TO THE RESPONDENTS' ARGUMENT THAT MOTION TO REMAND IS INSUFFICIENT

The Respondent contends that the facts alleged in the motion to remand (A. 62-71) do not justify a remand of the cause for an evidentiary trial on its merits. The Court of Appeals, in citing authority for the power of a court of equity to grant specific performance of an option contract, quotes from Corbin as follows:

> "The agreed price is $5,000 and unless that is shown to be shockingly inadequate the chancellor's conscience will be quite at ease." (A. 54)

In this case it was shown that the price fixed for the property at the time of the execution of the option was shockingly inadequate. Proof of this is established by the brief of the Respondent (page 5) referring to the investment made by the Respondent. The Respondent says:

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"It invested an additional $7,100,000 in the purchase of land contiguous to the leased option land and which together form the entire Aeroject tract."

In its response to the motion to remand (A. 107), the Respondent shows it has made a total purchase of 76,500 acres in Dade County, Florida. Twenty Five Thousand Three Hundred Thirteen acres is the state land. This leaves 51,187 acres for which the Respondent admits it paid a purchase price of $7,100,000. This proves that the other land purchased, a large percentage of which was optioned by Aerojet before the State option and was actually conveyed in the spring of 1962 shortly after the State option, was acquired at a price of almost three times the option price of $50.00 an acre for the State land.

The Petitioners motion to remand was signed by the Honorable Reubin O'Donovan Askew, Governor of the State of Florida. The Respondent's response to this motion to remand (A. 94-107) does not contain a denial of the truth of the facts alleged in the motion. The Rules of Civil Procedure provide that facts alleged in the motion and not denied in the response stand admitted. The response to the motion does not deny the truth of the statement that the contiguous land purchased by the Respondent was less valuable than the State land.

The Respondent points out in its brief at page 8 that the Respondent ceased operations of its rocket fuel manufacturing plant in 1967. The attempted exercise of the opiton to purchase in September, 1969, was at a time when the Respondent had no intention of utilizing the State land in connection with the operation of its fuel manufacturing

plant. Plainly this was a purchase for land speculation only. In its response (A. 99) the Respondent urges that Aerojet's Sacramento, California, booster facility "is already bursting at its seams." The total area of the Sacramento plant (A. 107) is 9,000 acres. It can hardly be logically contended that the Dade County plant should consist of 8½ times more acreage than that needed in the Sacramento plant, namely 76,000 acres.

It is fair under these circumstances to assume that the State's land never was reasonably intended to be used in connection with "the establishment of a manufacturing plant and facility to be used in production activities designed to strengthen the defense posture of the United States which use of such public lands would serve the best interests of the people of the State of Florida."

We respectfully submit that the Petition for the Writ of Certiorari should be granted for the reasons hereinabove stated and because of events which have occurred subsequent to Petitioners' last filing, as in hereinafter set out.

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SUPPLEMENTAL BRIEF OF THE PETITIONERS, THE TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, CALLING ATTENTION TO INTERVENING MATTER NOT AVAILABLE AT THE TIME OF PETITIONERS' LAST FILING, PURSUANT TO THE PROVISIONS OF THE UNITED STATES SUPREME COURT RULE 24 (5).

THE SUPREME COURT OF FLORIDA HAS THE QUESTION OF THE POWER OF THE TRUSTEES NOW PENDING BEFORE IT

The Petitioners, the Trustees of the Internal Improvement Trust Fund, attach to this brief certain documents and papers which have been filed in the Supreme Court of Florida and in the United States District Court in and for the Northern District of Florida, which deal directly with the question posed by the petition for certiorari. These documents have been included under a Supplemental Appendix and will be referred to by the initials "SA."

On petition of Metropolitan Dade County, Florida, the Supreme Court of Florida, June 12, 1972, issued its Alternative Writ of Mandamus directed to the Petitioners, the Trustees of the Internal Improvement Trust Fund. A true copy of the Alternative Writ is set forth in the Supplemental Appendix of the Petitioners, which is hereto attached at page 3. The issuance of the Alternative Writ was consented to by the Petitioners, the Trustees of the Internal Improvement Trust Fund. (SA 8). The Alternative Writ, in Florida, is the complaint and process and the initial pleading in a mandamus

proceeding. See Florida Rules of Civil Procedure, Rule 1.660 (b) and *City of Bradenton, et al. v. State ex rel. Perry*, 160 So.506 (1935).

In the Alternative Writ the County contends that under Section 253.111,[2]

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . ."

that it was entitled to an opportunity to receive such land for public purposes because:

> "This statute (a) denies the power of the Respondent State Board of Trustees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes."

---

[2]Section 253.111, F.S. (inpart)

253.111 Notice to board of county commissioners before sale.—The board of trustees of the internal improvement trust fund of the state shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the county in which such land is situated to receive such land for public purposes on the following terms and conditions:

* * *

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On the 22nd day of June, 1972, the Petitioners, the Trustees of the Internal Improvement Trust Fund, in the cause sub judice, but respondents in the case in the Supreme Court of Florida, filed their return to the Alternative Writ. (SA 10). The Petitioners, the Trustees of the Internal Improvement Trust Fund, set forth in their return that a court appointed commissioner on June 16, 1972, deeded the property to Aerojet pursuant to the judgment of the lower Federal District Court, which had been affirmed by the United States Court of Appeals, Fifth Circuit.

At the same time on June 22, 1972, the Board of Trustees of the Internal Improvement Trust Fund filed a Third Party Complaint in said cause against Aerojet General Corporation vouching them in as an interested party. (SA 13).

On the 23rd day of June, 1972, Dade County petitioned for an amendment to the alternative writ extending the writ to Aerojet General Corporation and making it a party to the cause. (SA 17).

Thereafter, on June 24, 1972, the Respondent, Aerojet General Corporation, filed a suit in the United States District Court, Northern District of Florida, Tallahassee Division, against the Petitioners and the Board of County Commissioners of Metropolitan Dade County and the County Attorney for Metropolitan Dade County, Florida.

Thereafter, on June 29, 1972, Aerojet General Corporation filed an amended complaint (SA 20). Exhibit A attached to said amended complaint is shown in the original Record, Vol. I, pages 32-41, inclusive. Exhibit

C to said amended complaint is contained within the terms of the Alternative Writ of Mandamus. (SA 10). Exhibits D and E appear at (SA 13, 17). In said amended complaint Aerojet seeks to enjoin the County from prosecuting the mandamus proceeding in the Supreme Court of Florida and in said complaint it contends that the enactment of Section 253.111, F.S., "is unconstitutional as violative of Article I, §10, United States Constitution," in that it impairs the obligations of a contract.

On June 30, 1972, Aerojet filed a Motion for Leave to File Memorandum of Law as Amicus Curiae, (SA. 45) and on July 7, 1972, the Supreme Court of Florida granted the motion permitting counsel as amicus curiae to file a memorandum of law "on behalf of Aerojet General Corporation." (SA. 49)

The Supreme Court of Florida in said mandamus proceeding is directly faced with the problem of determining whether or not the Petitioners had the legal authority in 1961 to execute a ten-year option to purchase the public lands of Florida. If no such statutory authority exists or existed, then the enactment of Section 253.111, F.S., could not impair the obligations of the option contract because no valid option was given. In the event the Supreme Court of Florida determines that no valid option was given because of a lack of statutory authority of the Petitioners, it may well be that the Supreme Court of the United States will apply the rule enunciated in the following cases:

Wade v. Travis County, Texas, 174 U.S. 499, 19 S.Ct. 715, 43 L.Ed. 1060 and *Oakes et al. v. Mase*, 165 U.S. 363, 17 S.Ct. 345, 41 L.Ed. 746.

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In the cited cases it appears that after the Circuit Court of Appeals had rendered a decision on a State question in these diversity cases and while certiorari was pending in the Supreme Court of the United States directed to the decisions of the Circuit Court of Appeals, the precise State question was decided by the highest appellate court of the State, contrary to the decision of the United States Court of Appeals. Under such circumstances, the Supreme Court of the United States followed the decision of the State court and vacated the decision and judgment of the United States Court of Appeals.

It is quite conceivable that the Supreme Court of Florida will determine within a short while the question of whether the option contract was a valid, enforceable document.

CONCLUSION

The Petitioners point out that this case pends in a court of equity. In the event the judgment of the lower appellate court is quashed and the option agreement is declared void, this will not withdraw from the trial court the jurisdictional power to do equity between the parties.

Respectfully submitted,

ROBERT SHEVIN
Attorney General of the State of Florida, Counsel for the State of Florida Board of Trustees of the Internal Improvement Trust Fund and Counsel for the State of Florida Board of Education, Petitioners.
The Capitol
Tallahassee, Florida 32304

BY:_____
ROBERT SHEVIN

MARION E. SIBLEY
Special Assistant Attorney General, Appointed to appear for the Petitioners.
605 Lincoln Road
Miami Beach, Florida 33139

BY:_____
MARION E. SIBLEY

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CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the above and foregoing "Reply to the Brief of the Respondent Aerojet-General Corporation" was furnished by mail to George W. Wright, Jr., Esq., Attorney for Respondent, 1600 First National Bank Building, Miami, Florida 33131, on this ____ day of _____, 1972.

MARION E. SIBLEY
(Of Counsel)

SUPPLEMENTAL APPENDIX OF PETITIONERS

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in the
Supreme Court
of the
United States

CASE NO. 71-1505

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, et al., as and constituting the members of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the BOARD OF EDUCATION of the State of Florida,

Petitioners,

vs.

AEROJET-GENERAL CORPORATION,

Respondent.

SUPPLEMENTAL APPENDIX OF PETITIONERS

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1972

MONDAY, JUNE 12, 1972

CASE NO. 42,461

STATE OF FLORIDA, ex rel.
METROPOLITAN DADE COUNTY,
a political subdivision of the State of Florida,
Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S.,

Respondents.

ALTERNATIVE WRIT OF MANDAMUS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA TO REUBIN O'DONOVAN ASKEW, GOVERNOR OF THE STATE OF FLORIDA, RICHARD B. STONE, SECRETARY OF STATE OF THE STATE OF FLORIDA, ROBERT SHEVIN, ATTORNEY GENERAL OF THE STATE OF FLORIDA, FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, THOMAS D. O'MALLEY, TREASURER OF THE STATE OF FLORIDA, FLOYD T. CHRISTIAN, COMMISSIONER OF EDUCATION OF THE STATE OF FLORIDA, AND DOYLE CONNOR, COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, COMPRISING THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, CREATED UNDER CHARTER, F.S. GREETING:

WHEREAS upon Petition filed herein by Petitioner-Relator it has been made to appear that:

1. Relator is Metropolitan Dade County, a political subdivision of the State of Florida.

2. Respondents are REUBIN O'DONOVAN ASKEW as the Governor of the State of Florida, RICHARD B. STONE as Secretary of State of the State of Florida, ROBERT SHEVIN as Attorney General of the State of Florida, FRED O. DICKINSON, JR. as Comptroller of the State of Florida, THOMAS D. O'MALLEY as Treasurer of the State of Florida, FLOYD T. CHRISTIAN as Commissioner of Education of the State of Florida, and DOYLE CONNOR as Commissioner of Agriculture of the

State of Florida, as and constituting the Board of Trustees of the Internal Improvement Trust Fund, created by Section 253.02, F.S.

3. Jurisdiction of this Court is invoked under the provisions of Article V, Section 4, Subsection 2 of the Constitution of the State of Florida, in that the Respondents are State officers and comprise the Board of Trustees of the Internal Improvement Trust Fund, a board within the purview and meaning of this constitutional provision.

4. Respondents as such Trustees are charged with the administration of the trust fund specifically described in Section 253.01, Florida Statutes. Under the provisions of Section 253.02, Respondent Trustees are granted the "power to sell and transfer said lands" referred to in Section 253.01 "to the purchasers and receive payment for the same."

5. In December, 1961 the prior Trustees of the Internal Improvement Trust Fund, not those presently constituting the Board, granted an option to Aerojet-General Corporation to purchase the following described property, situated in Dade County, Florida, which constitutes part of the property designated and described in Section 253.01, F.S.:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W ½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

This option was for a term of ten years and for a purchase price of $50. per acre. No legislative authority or

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power was then or ever has been vested in the Trustees to validly grant such an option.

6. Notwithstanding the existence of the alleged option, the Legislature of the State of Florida, in the exercise of its police power, enacted in 1065 Section 253.111, Florida Statutes, which provides in part as follows:

> "The Board of Trustees of the Internal Improvement Trust Fund of the State shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the County in which the land is situated to receive such land for public purposes . . . ."

At the time of the enactment of this statute and at the present time, the Board of Trustees of the Internal Improvement Trust Fund hold title to the above described property. The alleged option, above referred to, cannot operate to oust the Legislature of its power to require the Trustees to afford to Dade County an opportunity to acquire these lands for public purposes. This statute (a) denies the power of the Respondent State Board of Trustees to execute the alleged option, (b) even though the alleged option has been executed prohibits the Respondent Trustees from conveying title to such lands upon purported exercise of this option without first affording an opportunity to Petitioner to acquire these lands for public purposes, and (c) is the exercise of the police power to protect public lands from being conveyed to private interests when they are needed and desired by the County for public purposes.

7. Respondent Trustees have not afforded to Dade County an opportunity to acquire these lands for public purposes and Respondents will in the near future convey

these lands to Aerojet-General Corporation pursuant to the terms of this option and under the order and judgment of the U.S. District Court for the Northern District of Florida and affirmed by the U.S. Court of Appeals for the Fifth Circuit.

8. Petitioner was not a party to the action in the U.S. District Court and the judgment rendered by the U.S. District Court is not binding upon the Petitioner and does not constitute a judgment forfeiting the Petitioner's right to acquire the above described lands for public purposes.

9. The right of Petitioner to acquire these lands for public purposes under the provisions of Chapter 253, Florida Statutes, is prior to and supersedes any right or interest of Aerojet-General Corporation to acquire these lands.

10. The interpretation and construction of this Florida Statute is purely a State matter governed by State law, the final arbiter of the meaning of this statute, the powers of Respondent Trustees, and the effect of Section 253.111 being vested in the Supreme Court of Florida.

11. The Relator, Metropolitan Dade County, has no other plain, complete, speedy, and adequate remedy.

12. The issues here involved are not issues of fact requiring the taking of testimony.

13. The Relator, Metropolitan Dade County, and the people of Dade County will sustain injury and damage if they are denied the use and ownership opportunity of this land.

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NOW, THEREFORE, this is to command you the Honorable REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commisioner of Education of the State of Florida, and DOYLE CONNOR, Commisioner of Agriculture of the State of Florida, comprising the Board of Trustees of the Internal Improvement Trust Fund, created under Chapter 253, F.S., to afford Dade County the right to acquire these lands or show cause, by return and brief, if any you have, on or before July 5, 1972, why Peremptory Writ of Mandamus commanding the same to be done by you should not issue.

WITNESS the Honorable B. K. Roberts, Chief Justice of the Supreme Court of Florida, and the Seal of said Court at Tallahassee, the Capital, on this the 12th day of June, 1972.

/s/ Sid J. White

Clerk of the
Supreme Court of Florida.

A TRUE COPY
Attest:
SID J. WHITE, Clerk
Supreme Court of Florida

by (signature ilegible)

Deputy Clerk

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality the State of Florida,

Petitioner

vs.

REUBIN O'D ASKEW, et al, comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents

[Received June 12, 1972]

WAIVER OF NOTICE OF HEARING AND CONSENT TO ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

Comes now Respondents, by and through their undersigned counsel and waive notice of hearing and consent to issuance of an alternative writ of mandamus in this case.

Robert L. Shevin
Attorney General

/s/ Barry S. Richard

Barry S. Richard

Deputy Attorney General
The Capitol
Tallahassee, Florida

/s/ M. Stephen Turner

M. Stephen Turner

General Counsel
Board of Trustees
Eliott Building
Tallahassee, Florida

I hereby certify that I have served a copy of the foregoing to Stuart L. Simon, County Attorney, Dade County Court House, Miami, Florida, this 9th day of June, 1972.

/s/ M. Stephen Turner

M. Stephen Turner

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

[Received June 23, 1972]

RETURN OF RESPONDENTS

COME NOW respondents and for their return to the Alternative Writ of Mandamus issued in this cause answer the Petition by admitting the allegations of fact contained therein but allege the following as a defense to the petition.

I

At the time the Petition was filed, respondents were under order of the United States District Court for the Northern District of Florida, issued on June 7, 1972 pursuant to Rule 70, Federal Rules of Civil Procedure, to deed the land in question to Aerojet-General Corporation within fifteen days. The federal summary judgment in favor of Aerojet-General Corporation had been affirmed on appeal to the United States Fifth Circuit Court of

Appeals, [See Aerojet-General Corp. v. Askew, et al., 453 F.2d 819] and the mandate of that court issued. On June 16, 1972, said District Court directed that upon failure of respondents to execute a deed, the Clerk of the District Court for the Southern District of Florida would be designated as a commissioner and appointed to execute an appropriate deed. A copy of that order is attached as Exhibit A.

II

In an attempt to avoid any conflict with the exercise of this Court's authority, respondents requested the said District Court in an emergency hearing to stay the execution of its order requiring the lands to be deeded to Aerojet-General Corporation. On June 20, 1972, however, this request was denied and the said District Court appointed the Clerk of the United States District Court for the Southern District of Florida as commissioner to execute a deed with like effect as if done by respondents. A copy of that order is attached as Exhibit B. Pursuant to that order, a fee simple deed was executed and delivered by the appointed commisioner to Aerojet-General Corporation on June 21, 1972.

III

As respondents were compelled by action of Aerojet-General Corporation to divest themselves of the lands involved herein, Aerojet-General Corporation is liable for respondents' inability to offer such land to Dade County and has taken such land charged with the preemptory right of Dade County conferred by §253.111, Florida Statutes.

WHEREFORE, respondents pray the Court to absolve them from any duty to convey the lands involved to petitioner, to determine that Aerojet-General Corporation is responsible to petitioner in their stead, and to otherwise adjudicate the rights and liabilities of the parties as affected by §253.111, Florida Statutes.

ROBERT L. SHEVIN
Attorney General

BARRY S. RICHARD
Deputy Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

/s/ M. Stephen Turner

M. STEPHEN TURNER
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Return of Respondents have been furnished by mail to Mr. Stuart L. Simon, County Attorney, Dade County Courthouse, Miami, Florida, and to George W. Wright, Jr., Esquire, of Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, 100 Biscayne Boulevard South, Miami, Florida 33131, attorney for Aerojet-General Corporation, this 22nd day of June, 1972.

/s/ M. Stephen Turner

M. STEPHEN TURNER

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IN THE SUPREME COURT OF
THE STATE OF FLORIDA

Case No. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

vs.

AEROJET-GENERAL CORPORATION, a foreign corporation,

Third Party Respondents.

[Received June 23, 1972]

THIRD PARTY COMPLAINT

1. Complainants, as Respondents in the above-styled case, constitute the Board of Trustees of the Internal Improvement Trust Fund created by Section 253.052, Florida Statutes.

2. Third Party Respondent is an Ohio corporation authorized to transact business in Florida.

3. On June 9, 1972, Complainants were served with a Petition for Writ of Mandamus filed by Metropolitan Dade County as Petitioner in the above-styled case. Petitioner sought to be afforded the right to acquire the following described lands in Dade County for public purposes pursuant to F.S. §253.111 before Complainants conveyed these lands to Third Party Respondent:

> Sections 1 through 14, Township 57 South, Range 37 East; Sections 17 through 20, Township 56 South, Range 37 East; Sections 24 through 36, Township 56 South, Range 37 East; W ½ of Section 5, Township 59 South, Range 38 East; Section 6, Township 59 South, Range 38 East.

4. On June 12, 1972, the Supreme Court of Florida issued an Alternative Writ of Mandamus requiring Complainants to afford Metropolitan Dade County the right to acquire the aforementioned lands or show cause why a peremptory writ of mandamus commanding same should not be issued.

5. Complainants and Third Party Respondent were parties to a certain action styled Aerojet-General Corp v. Askew, et al., reported at 453 F.2d 813, in which the Fifth Circuit Court of Appeals affirmed a lower court judgment determining that Aerojet-General Corporation was entitled to specific performance of the exercise of a certain option agreement covering the aforementioned lands. Pursuant to the mandate of the Fifth Circuit Court of Appeals, the District Court for the Northern District of Florida issued an order compelling specific performance, and on June 21, 1972, the aforementioned lands were deeded by a court-appointed commissioner to Third Party Respondent.

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6. By virtue of the federal court suit instituted by Third Party Respondent and the order compelling specific performance obtained by it, Complainants were unable to afford Metropolitan Dade County the opportunity to receive the aforementioned lands as required by Section 253.111, Florida Statutes, and Third Party Respondent is accountable for any unauthorized action of Complainants in that respect.

7. At the time of its exercise of the option to purchase from Complainants, Third Party Respondent knew that F.S. §253.111 had conferred a prior right in favor of Metropolitan Dade County and knew Complainants had no authority to honor the exercise of such option unless Metropolitan Dade County refused to exercise its right to receive the aforementioned lands.

8. Nevertheless, Third Party Respondent elected to proceed with a suit for specific performance in federal court against Complainants rather than claiming damages for breach of contract by the State and without joining Metropolitan Dade County to adjudicate its right to the aforementioned lands. Hence, Third Party Respondent holds said lands subject to the interest of Metropolitan Dade County and is answerable for such interest.

WHEREFORE, Complainants pray this Court to declare Third Party Respondent responsible to Metropolitan Dade County for the interest in the aforementioned lands conferred by §253.111, Florida Statutes, and obligated to take same action under said statute as Complainants would have had to take if not required to deed said lands to Third Party Respondent.

ROBERT L SHEVIN
Attorney General

BARRY S. RICHARD
Deputy Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

/s/ M. Stephen Turner

M. STEPHEN TURNER
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Third Party Complaint has been furnished by mail to Mr. Stuart L. Simon, County Attorney, Dade County Courthouse, Miami, Florida, and George W. Wright, Jr., Esquire, of Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, 100 Biscayne Boulevard South, Miami, Florida 33131, attorney for Aerojet-General Corporation, this 22nd day of June, 1972.

/s/ M. Stephen Turner

M. STEPHEN TURNER

BLEED THROUGH POOR COPY

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'D. ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents,

vs.

AEROJET-GENERAL CORPORATION, a foreign corporation,

Third Party Respondents.

REQUEST FOR AMENDMENT TO ALTERNATIVE WRIT OF MANDAMUS AND MOTION TO EXTEND ALTERNATIVE WRIT OF MANDAMUS TO THIRD PARTY RESPONDENT

Petitioner, State of Florida ex rel, Metropolitan Dade County, a political subdivision of the State of Florida, by and through its undersigned attorney, respectfully moves this Honorable Court to extend its Alternative Writ of Mandamus to Aerojet-General Corporation, a foreign corporation, third party respondents, and says:

1. On June 12, 1972, this Court issued its Alternative Writ of Mandamus to Reubin O'D. Askew, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund, Respondents.

2. On June 22, 1972, Respondent filed its return and alleged that Aerojet-General Corporation is liable and responsible for Respondents' inability to offer the lands in issue to Petitioner Dade County.

3. By virtue of a fee simple deed issued by the Clerk of the United States District Court for the Southern District of Florida, Aerojet-General Corporation now holds claim to title to said lands.

4. On June 22, 1972, Aerojet-General Corporation was designated by the original Respondent as a third party Respondent in the pending cause and was alleged to be responsible to the Petitioner for the Petitioner's interest in the aforementioned lands. Aerojet-General Corporation is therefore obliged to take the same course of action under the law as the Respondents, Askew, et al., were directed to take by this Court's Alternative Writ of Mandamus.

5. Aerojet-General Corporation is a necessary and indispensable party to this mandamus proceeding without which full and complete relief may not be granted.

6. This request for Amendment and Motion to Extend the Alternative Writ of Mandamus to Aerojet-General Corporation is proper pursuant to Rule 1.660(c) Florida Rules of Civil Procedure.

WHEREFORE, Petitioner prays that the Alternative Writ of Mandamus previously issued be extended to include the Aerojet-General Corporation in order that all necessary and indispensable parties be a subject to this Court's jurisdiction.

Respectfully submitted,

STUART SIMON
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By: /s/ Alan T. Dimond
Alan T. Dimond
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Amendment to Alternative Writ of Mandamus and Motion to Extend Alternative Writ of Mandamus to Third Party Respondent was mailed this 23rd day of June, 1972, to:

George W. Wright, Jr., Esquire
Mershon, Sawyer, Johnston, Dunwody & Cole
1600 First National Bank Building
100 Biscayne Boulevard South
Miami, Florida 33131

Robert L. Shevin, Attorney General and
Barry S. Richard, Deputy Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

M. Stephen Turner, Esquire
General Counsel
Board of Trustees
Elliot Building
Tallahassee, Florida 32304

/s/ Alan T. Dimond
Assistant County Attorney

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

No. TCA 1831

AEROJET-GENERAL CORP.,
an Ohio corporation,

Plaintiff,

vs.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNER, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the State of Florida; STEPHEN P. CLARK, Mayor of Metropolitan Dade County, and S. A. DANSYEAR, JOYCE GOLDBERG, HARVEY I. REISMAN, EDWARD T. GRAHAM, EDWARD C. FOGG, III, JAMES F. McKILLIPS and HARRY P. CAIN, Commissioners of Metropolitan Dade County, as and constituting the Board of County Commissioners of Metropolitan Dade County, Florida; METROPOLITAN DADE COUNTY, FLORIDA; and STUART SIMON, County Attorney of Metropolitan Dade County, as County Attorney of Metropolitan Dade County, Florida,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY DECREE AND INJUNCTIVE RELIEF

Petitioner sues Defendant and says:

1. The Plaintiff is a corporation duly incorporated, organized and existing under the laws of Ohio, with its principal place of business in a state other than the State of Florida.

2. REUBIN O'DONOVAN ASKEW is Governor of the State of Florida. RICHARD B. STONE is Secretary of the State of Florida. ROBERT SHEVIN is Attorney General of the State of Florida. FRED O. DICKINSON, JR. is Comptroller of the State of Florida. THOMAS D. O'MALLEY is Treasurer of the State of Florida. FLOYD T. CHRISTIAN is Commissioner of Education of the State of Florida. DOYLE CONNER is Commissioner of Agriculture of the State of Florida. In their respective official capacities, said Defendants are members of and constitute the Board of Trustees of the Internal Improvement Fund of the State of Florida. (Hereafter, "Trustees".) Said Defendants are citizens of the State of Florida.

3. STEPHEN P. CLARK is Mayor of Metropolitan Dade County, Florida. S. A. DANSYEAR, JOYCE GOLDBERG, HARVEY I. REISMAN, EDWARD T. STEPHENSON, EDWARD T. GRAHAM, EDWARD C. FOGG, III, JAMES F. McKILLIPS and HARRY P. CAIN are Commissioners of Metropolitan Dade County, Florida. The Defendants named in this paragraph are and constitute the Board of County Commissioners of Metropolitan Dade County, Florida. (Hereafter, "Commissioners") Said Defendants are citizens of the State of Florida.

4. METROPOLITAN DADE COUNTY (hereafter, "Dade County" or "County") is a political subdivision of the State of Florida, having, under the provisions of the Florida Constitution, the powers of local self government.

5. STUART SIMON is County Attorney of Metropolitan Dade County, Florida. Said Defendant is a citizen of the State of Florida. (Hereafter, "County Attorney".)

6. The matter in controversy herein exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs. This action arises under the Constitution of the United States, to enforce Plaintiff's Constitutional rights, as hereinafter more fully appears. This Court has jurisdiction of the cause pursuant to Title 28 U.S.C. §§1131, 1132.

7. On or about the 21st day of December, 1961, Plaintiff and the Trustees entered into a written Lease With Option To Purchase, a true and correct copy of which is attached hereto and by reference made a part hereof as Exhibit A. A memorandum of said Lease With Option To Purchase was recorded in the Public Records of Dade County, Florida, on December 17, 1962, in Official Records Book 3450, at page 470. Said Lease-Option was also entered into by the STATE OF FLORIDA, BOARD OF EDUCATION (hereafter "Board of Education"), the membership of which Board is identical to the membership of the Defendant Board of Trustees.

8. Pursuant to the Lease-Option contract, Plaintiff did exercise its option to purchase the lands described in the contract, by serving upon the Trustees and the Board of Education written notice of the exercise of said option

to purchase on September 8, 1969. Thereafter, the Trustees and Board of Education refused to perform their contract by declining to convey the property described in the Lease-Option to Plaintiff in return for payment of the specified purchase price. Thereupon, Plaintiff herein filed suit in this Court for specific performance of the contract (Case TCA-1534), and on September 21, 1970, this Court entered Final Judgment of Specific Performance for Plaintiff (318 F.Supp. 55), which judgment was affirmed by the United States Court of Appeals, Fifth Circuit (hereafter "Court of Appeals"), on December 9, 1971 (453 F.2d 819) and its mandate issued on March 9, 1972. That case presently pends before the United States Supreme Court on petition for writ of certiorari, as case number 71-1505, although applications by the Trustees and Board of Education for a stay of enforcement of this Court's Final Judgment by specific performance and the mandate of the Court of Appeals were made both to the Court of Appeals and the United States Supreme Court and denied. On or about June 20, 1972, pursuant to order of this Court, the property encompassed by the terms of the Lease-Option contract was deeded in fee simple to Plaintiff. Copy of said deed, which has been delivered to Plaintiff, is attached hereto as Exhibit B.

9. Subsequent to affirmance by the Court of Appeals of this Court's judgment of specific performance aforementioned, while the cause remained pending on petition for writ of certiorari before the Supreme Court of the United States, and even as this Court was entering its orders to enforce its specific performance judgment of September 21, 1970, Defendant DADE COUNTY filed a petition for writ of mandamus (hereafter "the mandamus proceedings") in the Florida Supreme Court, seeking mandamus relief

against the Defendant-TRUSTEES. Said Petition was filed by Defendant SIMON, purportedly pursuant to his authority to act as attorney for Defendant DADE COUNTY and Defendant COMMISSIONERS. True copy of said petition and memorandum in support thereof are attached hereto as Exhibit C. Plaintiff is not a party to said mandamus proceeding .The Defendants who are parties to said mandamus proceedings are now engaged in what amounts to a friendly suit that attempts and would purport to invoke the application of a Florida Statute §253.111 to Plaintiff's contract (Exhibit A), that if so applied would unconstitutionally impair contractual rights held by Plaintiff and also attempts and purports to put in issue the question of impairment of Plaintiff's said contractual rights by the issuance of a peremptory writ of mandamus, compelling the TRUSTEES to offer most of the aforesaid lands covered by Plaintiff's contract for sale to Dade County. Said Florida Statute was enacted long subsequent to the execution of the Lease-Option contract attached hereto as Exhibit A, and, therefore, has no application thereto, but, if so applied, as sought by Defendants in the mandamus proceedings, would impair the obligation of contract in the manner prohibited by Article 1, Section 10 of the United States Constitution.

10. The Supreme Court of Florida, upon the COUNTY's petition and TRUSTEES' consent thereto, (true copy of which is attached hereto as Exhibit D), has issued its alternative writ of mandamus (true copy of which is attached hereto as Exhibit E) compelling the Defendant TRUSTEES to offer for sale to the COUNTY most of the property lease-optioned to Plaintiff by the contract attached as Exhibit A, or to show cause by written return and brief on or before July 5, 1972, why a peremptory writ of man-

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damus so compelling the TRUSTEES should not issue. Said issuance of an alternative writ of mandamus is a ruling by the Supreme Court of Florida that prima facie, §253.111, Fla. Stats. applies to the contract attached hereto as Exhibit A. (Rule 4.5b(3), Florida Appellate Rules.) By virtue of the execution and delivery to Plaintiff of the aforementioned fee simple deed to the lands involved, the mandamus proceedings have become and are now moot, and present only academic and theoretical questions. The Defendant TRUSTEES no longer have title to the property involved, and therefore could not comply with an alternative or peremptory writ of mandamus conditioned as aforesaid. This is evidenced by the return filed by Defendant TRUSTEES, copy of which is attached as Exhibit F. No further proceedings in the Florida Supreme Court could validly affect or divest the rights of Plaintiff acquired by fee simple deed to the subject property, and Plaintiff has no duty of any sort to the Defendant DADE COUNTY with respect to the subject lands.

11. Defendants, jointly or severally, seek under color of law, to enforce a state statute which Plaintiff seeks to prevent on the ground that the statute is unconstitutional if applied as aforesaid, and if so applied and enforced against Plaintiff, would work irreparable injury for which injunctive relief as hereafter prayed for is necessary in aid of this Court's jurisdiction herein and to protect and effectuate its prior judgments and orders.

12. As to this Plaintiff, all issues of the applicability to its contract of §253.111, Fla. Stats., are res judicata as between Plaintiff and Defendant TRUSTEES, and the judgment of specific performance heretofore entered by this Court precludes the COUNTY from securing from the

TRUSTEES title to the lands described in Exhibit A. All issues of the applicability of Section 253.111, Fla. Stats. to the contract attached as Exhibit A, have been waived by Defendants, jointly and severally, and Defendants, jointly and severally, are legally and equitably estopped to now assert any rights if any there may be, against Plaintiff either in the pending mandamus proceedings, in these proceedings, or by any separate action. The conduct of the Defendants, jointly and severally, since the enactment of §253.111, Fla. Stats. amounts in fact, law and equity to a waiver of any rights which may otherwise be accrued to Defendants, jointly and severally, by virtue of the enactment of said §253.111, Fla. Stats. Accordingly, Defendants, jointly and severally, are forever estopped from making any claim against Plaintiff upon any theory which is based on the enactment of §253.111, Fla. Stats.

13. There is a genuine and bona fide dispute between Plaintiff and Defendants as to the issues of law hereinabove raised and alleged.

14. Plaintiff is without adequate remedy at law.

WHEREFORE, Plaintiff prays the Court will take jurisdiction of the cause and the parties, and:

a. Declare and adjudge that Florida Statute §253.111 does not apply to the contract attached hereto as Exhibit A, or is unconstitutional as violative of Art. 1, §10 U.S. Constitution, to the extent it may be applicable to such contract so as to deny to Plaintiff its contractual rights to acquire or retain title to the lands described in said contract.

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b. Preliminarily enjoin Defendants, jointly and severally, from proceeding in any way with the mandamus proceedings referred to above which is presently pending in the Supreme Court of Florida, and from the enforcement of any writ, judgment or order entered therein.

c. Preliminarily enjoining Defendants, jointly and severally, from instituting or prosecuting any other suit or action the object or purpose of which is to deny to Plaintiff the right to receive or retain title to the lands described in the contract attached as Exhibit A.

d. That, upon final hearing, the preliminary injunctions sought in paragraphs b and c above be made permanent.

e. Grant unto Plaintiff such other and further relief as the Court deems proper.

f. Grant unto Plaintiff its costs herein.

MERSHON, SAWYER,
JOHNSTON, DUNWODY
& COLE
Attorneys for Plaintiff

Aerojet-General Corporation
1600 First National Bank Building
Miami, Florida 33131

By /s/ George W. Wright, Jr.

George W. Wright, Jr.

By /s/ Karl B. Block, Jr.

Karl B. Block, Jr.

EXHIBIT B

[Filed June 20, 1972]

OFFICE OF CLERK U.S. DISTRICT COURT
NORTH. DIST. FLA.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AEROJET-GENERAL CORPORATION,
An Ohio Corporation,
Plaintiff,

v.

REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the State of Florida, and as and constituting members of the State Board of Education of the State of Florida,
Defendants.

ORDER APPOINTING COMMISSIONER FOR EXECUTION OF DEED

Upon representation to the Court and it affirmatively appearing that notwithstanding this Court's orders commanding defendants to convey to plaintiff certain real property described in this Court's final order, lying and being situate in Dade County, Florida, defendants have failed and refused to comply with this Court's orders. Pursuant to Rule 70, Federal Rules of Civil Procedure, the Court has authority to appoint a person to execute a conveyance of land or to deliver deeds in order to effect judgment compelling specific acts. The defendants have failed and refused to perform the specific acts required by this Court's judgment, as affirmed by the United States Court of Appeals for the Fifth Circuit. Therefore, it is

CONSIDERED, ORDERED and ADJUDGED as follows:

[1] The Honorable Joseph I. Bogart, Clerk of the United States District Court for the Southern District of Florida be and he is hereby appointed as this Court's Commissioner to perform the acts specified hereafter. The said Joseph I. Bogart is a resident of Miami, Dade County, Florida, within the Southern District of Florida, the district within which the property in question lies.

[2] The said Joseph I. Bogart be and he is hereby directed forthwith to execute the deed attached hereto in the name of and on behalf of the State of Florida Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education. Said deed, when so made, executed and delivered by said Joseph I. Bogart, as such

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commissioner, shall vest in plaintiff all the right, title, claim and interest of, in, and to the premises described therein to the same extent and with like effect as if done by the defendants.

[3] After execution of deed as hereinbefore ordered, the said Joseph I. Bogart shall deliver said executed deed to Aerojet-General Corporation, or its attorneys of record herein (Messrs. Mershon, Sawyer, Johnston, Dunwody & Cole, 1600 First National Bank Building, Miami, Florida), upon tender to the said Joseph I. Bogart of a cashiers check of a national bank located in the State of Florida, payable jointly to defendants in the sum of $1,246,308.88.

[4] Upon receipt of said check, the said Joseph I. Bogart shall cause same to be delivered to the Attorney General of the State of Florida, whereafter distribution of proceeds shall be made among defendants.

[5] The said Joseph I. Bogart shall, after complying with the terms of this order, report to the Court his costs in connection with compliance herein, which pursuant to Rule 70, Federal Rules of Civil Procedure, shall be taxed against defendants by further order.

DONE and ORDERED in Chambers in Tallahassee, Florida, this 20th day of June, 1972.

/s/ David L. Middlebrooks

DAVID L. MIDDLEBROOKS
United States District Judge

Certified to be a true and correct copy of the original. U.S. District Court Joseph I. Bogart, Clerk Southern Dist. of Fla.

/s/ Joseph I. Bogart
By_____
Clerk

Date: 6/20/72

CERTIFIED A TRUE COPY
MARVIN S. WAITS, CLERK

/s/ Helen A. Roberts
By_____
Deputy Clerk

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FEE SIMPLE DEED BY COMMISSIONER

THIS INDENTURE, made this 20th day of June, A.D. 1972, between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the STATE OF FLORIDA BOARD OF EDUCATION, parties of the first part, by JOSEPH I. BOGART, Clerk of the United States District Court for the Southern District of Florida, as COMMISSIONER appointed by the Honorable David L. Middlebrooks, United States District Judge of the United States District Court, Northern District of Florida, by order entered in a case therein pending styled "AEROJET-GENERAL CORPORATION, Plaintiff, vs. REUBIN O'DONOVAN ASKEW, et al., Defendants" (TCA 1534), a certified copy of which order is attached hereto, and AEROJET-GENERAL CORPORATION, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California, party of the second part.

WITNESSETH: that the said parties of the first part, for and in consideration of the sum of One Million, Two Hundred Forty-Six Thousand, Three Hundred Eight and 88/100ths Dollars ($1,246,308.88) (representing the net amount due parties of the first part on a purchase price of One Million, Two Hundred Sixty-five Thousand, Six Hundred Fifty and no/100ths Dollars ($1,265,650.00) after credits against said purchase price authorized by the Honorable David L. Middlebrooks, United States District Judge), to said Commissioner in hand paid, receipt whereof is hereby acknowledged, have granted, bargained, sold and transferred, and by these presents do grant, bargain, sell and transfer unto the said party of the second part and its successors and assigns, forever, all that certain

parcel of land lying and being in the County of Dade and State of Florida, more particularly described as follows:

> All of Sections 1 through 36 inclusive, Township 56 South, Range 37 East; all of Section 16, Township 57 South, Range 37 East; W ½ of Section 5, and all of Sections 6 and 16, Township 59 South, Range 38 East, containing 25,313 acres, more or less, and lying and being in the County of Dade in the State of Florida;

TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining;

TO HAVE AND TO HOLD the above granted and described premises in fee simple forever.

SAVING AND RESERVING unto the said STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and its successors, an undivided three-fourths interest in, and title in and to, an undivided three-fourths interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same.

IN WITNESS WHEREOF, the undersigned JOSEPH I. BOGART, as Commissioner, has executed this deed in the City of Miami, Florida, on this 20th day of June, 1972, in the name of and on behalf of the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, and the STATE OF FLORIDA BOARD OF EDUCATION, and has affixed the Seal of the United States District Court for the Southern District of Florida, pursuant to the Court order attached hereto.

BLEED THROUGH POOR COPY

(SEAL)
STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

(SEAL)
STATE OF FLORIDA BOARD OF EDUCATION

STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND; and STATE OF FLORIDA BOARD OF EDUCATION; and REUBIN O'DONOVAN ASKEW, Governor of the State of Florida, RICHARD (DICK) STONE, Secretary of State of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNER, Commissioner of Agriculture of the State of Florida, As and constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund and as and constituting the State of Florida Board of Education

Signed, Sealed and Delivered in the presence of:

s/ George W. Wright, Jr.

/s/ Karl B. Block, Jr.

(SEAL)

By: /s/ Joseph I. Bogart

JOSEPH I. BOGART,
as Commissioner

STATE OF FLORIDA
COUNTY OF DADE

BEFORE ME, the undersigned authority, personally appeared JOSEPH I. BOGART, to me well known and known to me to be the individual described in and who executed the foregoing deed, and acknowledged before me that he is Clerk of the United States District Court for the Southern District of Florida and is the Commissioner appointed to execute the foregoing deed, and acknowledged the execution of said deed as such Commissioner for and on behalf of the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education, as the act and deed of said State Boards, for the uses and purposes therein expressed, pursuant to authority conferred upon him by the Court order attached hereto, and that the Seal affixed hereto is the Seal of the United States District Court for the Southern District of Florida, and was affixed thereunto by said Commissioner.

WITNESS my hand and official seal at Miami, said County and State, on this 20th day of June, A.D. 1972.

/s/ Woodrow M. Melvin, Jr.

Notary Public, State of Florida at Large. My Commission Expires May 25, 1975. Bonded thru Maynard Bonding Agency.

Certified to be a true and correct copy of the original.

U.S. District Court
Joseph I. Bogart, Clerk
Southern Dist. of Fla.

By: /s/ Joseph I. Bogart

Clerk

Date: 6/20/72

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[Filed June 16, 1972]

OFFICE OF CLERK U.S. DISTRICT COURT
NORTH. DIST. FLA.
TALLAHASSEE CIVIL ACTION

NO. 1534

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AEROJET-GENERAL CORPORATION,
An Ohio Corporation,

Plaintiff,

v.

REUBIN O' DONOVAN ASKEW, Governor of the State of Florida, RICHARD B. STONE, Secretary of the State of Florida, ROBERT SHEVIN, Attorney General of the State of Florida, FRED O. DICKINSON, JR., Comptroller of the State of Florida, THOMAS D. O'MALLEY, Treasurer of the State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education of the State of Florida, and DOYLE CONNOR, Commissioner of Agriculture of the State of Florida, as and constituting members of the Board of Trustees of the Internal Improvement Fund of the the State of Florida, and as an constituting members of the State Board of Education of the State of Florida,

Defendants.

ORDER

On September 21, 1970, this Court entered summary judgment in favor of plaintiff and directed that defendants execute and comply with the contract of sale entered into between the parties on or about December 21, 1961. An appeal to the United States Court of Appeals for the Fifth Circuit ensued and the judgment of this Court was affirmed. Aeroject-General Corp. v. Askew et al, 453 F.2d 819 (5th Cir. 1971). On June 5, 1972, upon motion of plaintiff, this Court ordered specific performance herein to occur on or before June 21, 1972, conditioned upon denial of the United States Supreme Court of a stay of these proceedings. The application for writ of stay was denied by Mr. Justice Powell on or about May 20, 1972. As of the date of this order it appears that no closing date for the above ordered transaction has yet been agreed to by the parties and that the parties have not agreed as to the form of fee simple deed to be executed and delivered by defendants to plaintiff.

This Court was advised on June 14, 1972, that the State of Florida, upon the relation or complaint of metropolitan Dade County, a political subdivision of the State of Florida, had petitioned the Supreme Court of Florida on June 9, 1972, for issuance of writ of mandamus directed to these defendants, except the State of Florida Board of Education, requiring them to afford Dade County the right to acquire the same lands directed by judgment and order of this Court to be conveyed by defendants to Aerojet-General Corporation. On the same date, the respondents in that cause, the defendants herein except as above noted, filed a waiver of notice of hearing and consent to issuance

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of alternative writ of mandamus. Thereupon, on June 12, 1972, there was caused to be issued by the Clerk of the Supreme Court of Florida, an alternative writ of mandamus requiring respondents to afford Dade County the right to acquire those lands ordered by this Court to be conveyed to plaintiff herein, or to show cause why, on or before July 5, 1972, a peremptory writ of mandamus should not issue commanding same to be done. As of this date insofar as this Court is advised respondents herein have taken no affirmative action in response to or otherwise given response to the writ as issued.

To avoid further protraction of the enforcement procedures heretofore ordered, it is therefore

ORDERED:

[1] Defendants collectively and each of them in their representative capacities, their agents, successors, deputies and employees, and all persons acting by, through or under them or by or through their order, be and they are expressly enjoined from conveying those lands, directed to be conveyed by them to Aerojet-General Corporation by Judgment and order of this Court, to any other person or persons, sovereign or sovereign entity, or political subdivision or agency of the State of Florida, excepting the plaintiff Aerojet-General Corporation.

[2] In conformity with previous orders and judgment of this Court plaintiff may tender the net sum due defendants in the form of cashier's check of a national bank in the State of Florida, payable jointly to the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the State of Florida Board of Education.

[3] Closing shall take place at the executive offices of the Board of Trustees of the Internal Improvement Trust Fund, Tallahassee, Florida, on June 21, 1972, at 10:00 A.M.

[4] The form of deed attached hereto together with proper acknowledgment is the form of deed to be executed forthwith by defendants and to be delivered by them to plaintiff simultaneously upon payment by plaintiff of the purchase sum of one million two hunderd sixty five thousand six hundred fifty and no/100ths dollars ($1,265,-650.00) less rental prorations of seventeen thousand six hundred eighty four dollars and forty two cents ($17,684-.42) and less appellate costs of one thousand six hundred fifty six dollars and seventy cents ($1,656.70) or the net sum of one million two hundred forty six thousand three hundred eight dollars and eighty eight cents ($1,246,-308.88).

[5] Failing this the Court will, pursuant to Rule 70, Federal Rules of Civil Procedure, direct the acts of execution and delivery of the deed be done as and by the acts of defendants, each of them and collectively, with costs to be borne by them; with the acts, when so done to have like effect as if done by the disobedient parties. In this eventuality the Court will designate the Honorable Joseph I. Bogart, Clerk, United States District Court for the Southern District of Florida to act in the stead of defendants in the execution of and delivery of deed from defendants to plaintiff,

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DONE and ORDERED in Chambers in Tallahassee, Florida, this 16th day of June, 1972.

/s/ David L. Middlebrooks

DAVID L. MIDDLEBROOKS
United States District Judge

Certified to be a true and correct copy of the original, U.S. District Court Joseph I. Bogart, Clerk Southern Dist. of Fla.

/s/ Joseph I. Bogart

By_____
Clerk

Date: 6/20/72

Certified a True Copy
Marvin S. Waits, Clerk

By Helen A. Roberts

Deputy Clerk

FEE SIMPLE DEED

DEED NO._____

THIS INDENTURE, made this _____ day of _____, A.D. 1972, between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the STATE OF FLORIDA BOARD OF EDUCATION, parties of the first part, and AEROJET-GENERAL CORPORATION, a corporation organized and existing under the laws of the State of Ohio, with principal place of business in Azusa, Los Angeles County, California, party of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of One Million, two Hundred Sixty-five Thousand, Six Hundred Fifty and no/100ths Dollars ($1,265,650.00) to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and transferred, and by these presents do grant, bargain, sell and transfer unto the said party of the second part and its successors and assigns, forever, all that certain parcel of land lying and being in the County of Dade and State of Florida, more particularly described as follows:

All of Sections 1 through 36, inclusive, Township 56 South, Range 37 East; all of Section 16, Township 57 South, Range 37 East; W ½ of Section 5, and all of Sections 6 and 16, Township 59 South, Range 38 East, containing 25,313 acres, more or less, and lying and being in the County of Dade in said State of Florida;

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TOGETHER with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining;

TO HAVE AND TO HOLD the above granted and described premises in fee simple forever.

DEED NO._____

SAVING AND RESERVING unto the said STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and its successors, an undivided three-fourths interest in, and title in and to, an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on, or under said land and an undivided one-half interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the members of the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and the STATE OF FLORIDA BOARD OF EDUCATION have hereunto subscribed their names and have caused their official seals to be hereunto affixed, in the City of Tallahassee, Florida, on this the ____ day of _____, A.D. 1972.

(SEAL)
STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

(SEAL)
STATE OF FLORIDA BOARD OF EDUCATION

Governor

Secretary of State

Attorney General

Comptroller

Treasurer

Commissioner of Education

Commissioner of Agriculture

As and constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund and as and constituting the State of Florida Board of Education

Certified to be a true and correct copy of the original.
U.S. District Court
Jospeh I. Bogart, Clerk
Southern Dist. of Fla.

By /s/ Joseph I. Bogart

Clerk

Date: 6/20/72

CERTIFIED A TRUE COPY
MARVIN S. WAITS, Clerk

By /s/ F. F. Taylor

Deputy Clerk

BLEED THROUGH POOR COPY

[Received June 30, 1972]

County Attorney

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

Case No. 42,461

STATE OF FLORIDA ex rel METROPOLITAN DADE COUNTY, a political instrumentality of the State of Florida,

Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, et al., comprising the Board of Trustees of the Internal Improvement Trust Fund,

Respondents.

MOTION FOR LEAVE TO FILE MEMORANDUM OF LAW AS AMICUS CURIAE

This motion, and the attached Memorandum of Law are filed with the Clerk of this Court only and expressly for the purposes hereafter stated. In the event this Motion For Leave To File Memorandum Of Law as Amicus Curiae is not granted, then this motion and attached memorandum are withdrawn by movant, and movant will continue to have no present interest in these proceedings.

The undersigned attorneys represent AEROJET-GENERAL CORP. (hereafter, "Aerojet") solely and only in connection with respect to that certain case now pending

in the Supreme Court of the United States, Case No. 71-1505, on petition for certiorari, styled "Reubin O'Donovan Askew, et al., Petitioners v. Aerojet-General Corporation, Respondent"; and in that certain case now pending in the United States District Court, Northern District of Florida, Case No. TCA-1831, styled "Aerojet-General Corp. v. Reubin O'Donovan Askew, et al." The undersigned attorneys are not authorized by Aerojet to make any appearance in the above-styled proceedings, but only to seek leave of this Court to file an Amicus Curiae memorandum of law.

Aerojet is not a party to these proceedings. In light of the fact that relator's petition herein seeks to compel respondents herein to perform an alleged statutory, ministerial legal duty which relator claims of respondents, it is clear that Aerojet never could be a proper, necessary or indispensable party to these proceedings. Nonetheless, relator and respondents herein are busily doing their best, under the guise of an adversary proceeding, to have this Court purportedly adjudicate herein Aerojet's rights to that cerain realty described in Exhibit A. Aerojet has heretofore been adjudged entitled to fee simple title to said lands, in the aforementioned action now pending in the Supreme Court of the United States between Aerojet and respondents herein. Pursuant to judgment herein, and subject to the orders of the Supreme Court of the United States, Aerojet is fee simple owner of the realty described in Exhibit A.

Aerojet is informed, by professional courtesy of counsel for respondents herein, that there pends before this Court a request by respondents for issuance of a civil action summons directing Aerojet to respond to a "Third Party Complaint" purportedly filed against Aerojet by

BLEED THROUGH POOR COPY

respondents. Aerojet is further informed, by professional courtesy of counsel for relator herein, that there pends before this Court a request for amendment of the consent alternative writ herein, to purportedly impose the duty on Aerojet to comply with or respond to said alternative writ.

In view of the fact that either request, if by some chance granted, would deprive Aerojet of its legal, equitable or constitution rights, this motion is made for leave to file as Amicus Curiae, the attached memorandum of law.

Respectfully submitted,

MERSHON, SAWYER,
JOHNSTON, DUNWODY
& COLE, as Amicus Curiae
1600 First National Bank Building
Miami, Florida 33131

By /s/ George W. Wright, Jr.

George W. Wright, Jr.

By /s/ Karl B. Block, Jr.

Karl B. Block, Jr.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion For Leave To File Memorandum Of Law As Amicus Curiae was mailed this 29 day of June, 1972 to: M. STEPHEN TURNER, ESQ., General Counsel, Board of Trustees, Eliott Building, Tallahassee, Florida, BARRY S. RICHARD, ESQ., Deputy Attorney General, The Capitol, Tallahassee, Florida, STUART L. SIMON, ESQ., County Attorney, Dade

County Courthouse, Miami, Florida and MARVIN S. WAITS, Clerk U.S. District Court, Northern District of Florida, Tallahassee Division, Tallahassee, Florida (Case No. TCA-1831).

/s/ Karl B. Block, Jr.

Of Counsel

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1972

FRIDAY, JULY 7, 1972

CASE NO. 42,461

STATE OF FLORIDA EX REL.
METROPOLITAN DADE COUNTY, ETC.,
Petitioner,

vs.

REUBIN O'DONOVAN ASKEW, ET AL.,
Respondents.

[July 26, 1972]

The Motion for Leave to File Memorandum of Law as Amicus Curiae filed on behalf of Aerojet-General Corporation is granted.

A True Copy

TEST:
Sid J. White
Clerk Supreme Court.

By:_____

cc: Honorable George W. Wright, Jr.
Honorable M. Stephen Turner
Honorable Barry S. Richard
Honorable Stuart L. Simon